



THIS DECISION IS CITABLE AS PRECEDENT

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451  
www.uspto.gov

Re: Trademark Registration of :  
TRIGROUP USA LLC :  
 :  
 :  
U.S. Registration No. 7094797 : On Petition  
Registration Date: June 27, 2023 :  
Mark: AMERICOLD and penguin design :  
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 :  
Petition Filed: September 13, 2024 :

The United States Patent and Trademark Office (USPTO) received a petition to the Director filed on behalf of TRIGROUP USA LLC (petitioner) on September 13, 2024, regarding cancelled U.S. Registration No. 7094797. Petitioner requests that the USPTO reinstate the cancelled registration and consider a late response to an Office action issued in connection with a reexamination proceeding involving this registration. The Director has authority to review this request under Trademark Rules 2.146(a)(5) and 2.148, and delegated this request to the Commissioner for Trademarks. *See* 35 U.S.C. §3(a)-(b); 37 C.F.R. §§2.146(a)(5), 2.148. The petition is denied.

**FACTS<sup>1</sup>**

On February 27, 2024, the USPTO instituted a Trademark Act Section 16B reexamination proceeding in connection with this registration. 15 U.S.C. §1066b(d). The assigned reexamination examiner issued a combined notice of institution and nonfinal Office action that same day, informing petitioner that a response or request for a one-month extension of time was due within three months to avoid cancellation of the registration. The USPTO did not receive a response or request for extension on or before May 28, 2024.<sup>2</sup> On August 26, 2024, the USPTO issued a notice of termination of the reexamination proceeding and a notice of cancellation.

This petition requesting reinstatement of the registration and to accept a late response to an Office action in the terminated reexamination proceeding followed on September 13, 2024. Petitioner’s explanation, supported by declaration, states in full: “Hello We are in the process of developing a full line with some factories in China, but since someone filled [*sic*] our same name in Chi9na [*sic*] we are explaining in China Trade Mark office that they are not USA mark. Please don’t cancel our Brand,

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<sup>1</sup> This decision recites only the facts relevant to the issue on petition.

<sup>2</sup> May 27, 2024 fell on a federal holiday so the due date was May 28, 2024. *See* 35 U.S.C. §21(b); 37 C.F.R. §2.196; TMEP §308.

otherwise we don't have the Support to continue the investigation in China and manufacture our Refrigeration Compressors." (Petition.) The petition did not include a response to the Office action.

## DISCUSSION

When the USPTO institutes a reexamination proceeding under Trademark Act Section 16B, 15 U.S.C. §1066b(d), the reexamination examiner will issue an Office action providing the registrant with an opportunity to rebut the prima facie case of nonuse by submitting documentary evidence of use of the mark in commerce as of the relevant date. 15 U.S.C. §1066b(f); 37 C.F.R. §2.93(a). Trademark Rule 2.93(b)(1) provides that a response to the Office action or request for a one-month extension of time "must be received by the Office within three months from the issue date." 37 C.F.R. §2.93(b)(1). The rule also provides that if no response or request for an extension is filed within this time period, the reexamination proceeding will terminate, and the registration will be cancelled. *Id.*

Petitioner did not submit a response to the February 27, 2024 Office action. Thus, the USPTO properly terminated the reexamination proceeding and cancelled the registration.

Trademark Rule 2.146(c)(2) provides that a petition requesting reinstatement of a registration cancelled in whole or in part due to a failure to timely respond to an Office action issued in a reexamination proceeding must also include a properly signed response to the outstanding Office action. 37 C.F.R. §2.146(c)(2). Petitioner did not include a response to the Office action. Thus, the petition is not complete and cannot be granted.

However, even if the petition were complete, the petition does not set forth sufficient facts to permit the Director to waive the requirements of Rule 2.93(b)(1) and accept a late response, which is the relief the Director construes the petition to seek. Trademark Rule 2.146(a)(5) permits the Director to waive any requirement of the rules not being a requirement of the statute only "in an extraordinary situation, when justice requires and no other party is injured." 37 C.F.R. §§2.146(a)(5), 2.148; *see Trademark Manual of Examining Procedure* (TMEP) §1708 (November 2024). To waive this rule, the Director must determine that all three conditions are satisfied. *In re Tetrafluor, Inc.*, Ser. No. 73761898, 1990 Commr. Pat. LEXIS 14, at \*4 (Comm'r. Pats. 1990); *see* TMEP §1708.

First, petitioner's explanation that there is an ongoing matter in China regarding its mark does not demonstrate an extraordinary situation. *See* 37 C.F.R. §2.146(a)(5). To the extent that the failure to respond was due to an oversight or inadvertent error because petitioner was focused on an international matter, it is not an extraordinary circumstance. "Oversights that could have been prevented by the exercise of ordinary care or diligence do not constitute extraordinary situations

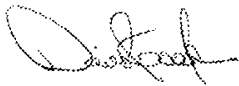
within the purview of these rules.” *In re Universal Card Grp., Inc.*, Ser. No. 74129576, 1992 Commr. Pat. LEXIS 13, at \*5 (Comm’r Pats. 1992); *In re Bird & Son, Inc.*, Ser. No. 74039501, 1977 Commr. Pat. LEXIS 10, at \*6 (Comm’r Pats. 1977).

Second, petitioner explains that cancellation of their registration would prevent them from continuing their investigation in China and manufacturing their products. However, justice does not require waiver of the rule in this case. A party cannot be excused from the rule merely because the results in a particular case may be harsh. *In re Buckhead Mktg. & Distribution, Inc.*, Ser. No. 78225282, 71 USPQ2d 1620, 1623 (Dir. USPTO 2004).

Petitioner has established neither an extraordinary situation nor that justice requires waiver of the rules to permit a late response and reinstatement of the registration.

#### **DECISION**

The petition is denied. The registration remains cancelled.



David S. Gooder  
Commissioner for Trademarks

Issue Date: January 24, 2025

Issued via email to:  
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